PART IV

Section 2-C—(ii)

STATUTORY ORDERS ISSUED BY THE STATE GOVERNMENT UNDER THE CENTRAL ACTS AND STATE ACTS.

GOVERNMENT OF MYSORE.

FOOD, CIVIL, SUPPLIES AND LABOUR DEPARTMENT (LABOUR).

Labour Dispute : Industrial Dispute between the Workmen and the Management of Mangalore Automobiles Ltd., Mangalore.

Award of the Labour Court, Hubli—Published.

Read the following papers :

(1) Letter No. 1340/67-68 dated 28th October 1967, from Shri Syed Azizuddin Ahmed, Presiding Officer, Labour Court, Hubli.

IN THE LABOUR COURT AT HUBLI

Dated 28th October 1967.

Reference (ID)(LCH) No. 55 of 1967.

Present:

Sri Syed Azizuddin Ahmed, M.A., B.L., ... *Presiding Officer*

Between :

The Workmen of Mangalore Automobiles Ltd., Attavar Road, Mangalore-1, represented by the Secretary, Kanara Motor and Engineering Workers' Union, Felix Pai Bazar, Mangalore ... *I Party*

and

The Management, Mangalore Automobile Ltd., Mangalore.

... *II Party*

This is a reference under section 10 (1)(c) of the Industrial Disputes Act, 1947 made by the Government of Mysore in their

Order No. LMA 865 LLD 67, dated 28th June 1967. The points of dispute referred for adjudication are as under :—

I. Are the management of Mangalore Automobile Ltd., Attavar Road, Mangalore-1 justified in terminating the services of the following workmen :—

(a) B. M. Thimmappa (bus conductor)

(b) T. Narayana Bhat (bus conductor)

(c) K. Padmanabhaya (bus conductor)

(d) U. Ramachandra Herala (bus conductor)

(e) G. H. Soans, Driver

(f) M. Monappa, Fitter

(g) K. Gopala Bangera, Turner

(h) Edward D'Souja, Blacksmith

(i) A. Shetty, Checking Inspector

(j) Aithappa Poojary, Attender.

II. If not, are the workmen entitled to reinstatement with back wages ?

III. Are the workmen entitled to the benefits mentioned in the annexure hereto in case they are to be retrenched ?

IV. Are all the workmen of the establishment entitled to bonus in according with the provisions of the Payment of Bonus Act, 1965 for the year 1965 ?

V. If not, to what other reliefs or quantum of bonus are the workmen entitled ?

2. The cause of the aggrieved workmen has been sponsored and espoused by the Kamara Motor and Engineering Workers' Union, Felix Pai Bazar, Mangalore represented by its Secretary, Sri H. Mahabal Rai, Vice President appeared for the I Party. There was no one present on behalf of the II Party. It had moved for an adjournment in a very callous manner without assigning any cogent reasons for seeking adjournments. Adjournments cannot be granted at the mere asking. Hence the application to grant adjournment was rejected. The points of dispute specified in the order of reference were treated as issues in the case. The I Party examined 7 witnesses and got marked 2 documents. The II Party had filed 7 documents. They were

read as exhibits in the case. The representative of the I Party stated that he does not press the claim of Sri K. Padmanabhaya, Sl No. (c), Sri U. Ramachandra Herala, Sl. No. (d) and Sri Edward D'Souza, Sl. No. (k).

3. The sum and substance of the Claim Statement, dated 28th July 1967 filed by the I Party is that the workmen referred to in the order of reference were the employees of the II Party. They had put in service with the II Party for varying periods as disclosed in the Claim Statement. The Management refused them work from 21st December 1966 without any prior notice or warning or assigning any reasons. When the I Party requested the management about the sudden cessation of work to their employees, they replied by their letter dated 30th December 1966 that on account of financial difficulties, the running of the buses has been stopped and the employees are permitted to join service elsewhere. The workmen have also not been given any bonus for the year 1965 66. They are entitled to bonus in accordance with the Bonus Act, 1965 for the year ending 31st March 1966 and proportionate bonus for the period from 1st April 1966 to 21st December 1966.

4. The Counter Statement, dated 11th August 1967 filed by the II Party is a woeful tale. It pleaded *inter alia* that the I Party workmen are not the members of the Kanara Motor and Engineering Workers' Union, Mangalore. Hence, this Court has no jurisdiction to entertain the dispute. The reference is belated and untenable. The claim of the workmen is highly speculative, fanciful, unreasonable, unfair, unjust and wrong. It maintained that owing to insufficient income and the other factors described in detail in the Counter Statement, the management closed the concern and the services of the workmen were dispensed with.

FINDINGS

5. The first point that would arise for determination is whether the present dispute is an industrial dispute. The I Party has examined seven of the aggrieved workmen. All of them have deposed in one voice that they are the members of the I Party union. I do not find sufficient reason to disbelieve their sworn testimony. I hold that the present dispute is an industrial dispute and that this Court has jurisdiction to hear the reference.

6. The principal point that arises for determination is whether the management was justified in terminating the services of the workmen. From a perusal of the document Ex. W-1 a letter by the management addressed to the Secretary of the I Party Union, it transpires that consequent to the closure of the business, the management terminated the services of its workmen. I shall reproduce here a part of the letter. It reads thus:

> "A notice was put up on the Notice Board when all the Buses came to a standstill. The sub-ordinates have been permitted to join services elsewhere since all Buses have stopped and since there is no income and since there are no funds They are at liberty to come or may come when Buses resume service. This is the best the Managemen can do."

This document, more than anything else, shows the sincerity of purpose of the management. The workmen have made a grievance that they were not served with individual notices terminating their services. Even the wages of previous four months were in arrears. Notice pay and retrenchment compensation was not paid to them and that the manager is responsible for the bad financial condition of the II Party. It is not here for me to apportion blame to any one individual. But the truth seems to be otherwise. The management has filed certified copies of the awards of the previous industrial disputes between the management and the workmen. From this, it is clear that the management was riven with internal dissension and industrial disputes. It appears to have been running under loss as far back as 1963. In Reference (ID) (LCH) No. 30 of 1963 an award has been passed as per Ex. M. 1. In paragraph 2 of the award has been stated:

> "When the case was taken up for hearing today, the Ist Party filed a memorandum stating that since the II Party company is likely to be wound up and liquidated soon, the I Party is not pressing the case and that the dispute may be dismissed as not pressed."

In the award Ex. M-2 passed in Reference (ID) (LCH) No. 30 of 1968 it has been stated:

> "Today, when the case was taken up for hearing, the Secretary of the I Party union filed a memorandum stating that since the I Party workmen have come to know that the II Party concern is going into liquidation

consequent upon severe financial crisis and will therefore not be able to meet their demands, they do not press their claim for bonus and that an award should be passed accordingly."

In Ex. M-4, an award in Industrial Dispute No. 15 of 1968 it has been stated that Shri T. P Rao, the learned representative of the first party present a memo representing to the Additional Tribunal that the dispute referred to above be dismissed with costs as not pressed. In Ex. M-7 an award in Reference No. 54 of 1966 it has been stated :

"When the case was called on for hearing at Mangalore camp on 19th November 1968, Sri Govindan for the first party submitted a memo to the effect that there is no available surplus to pay bonus as per the company's balance sheets of the respective years and hence the first party does not desire to press the demands for bonus and therefore the reference may be rejected."

All these go to show that the management has been in financial doldrums since a very long time. Ultimately, it decided to close down the business from 21st December 1968 and put up notice accordingly. Section 25 FFF lays down :

Where an undertaking is closed down for any reason whatsoever, every workmen who has been in continuous service for not less than one year in that undertaking immediately before the closure shall subject to the provisions of sub section (2) be entitled to notice and compensation in accordance with the provision of Section 25 F as if the workmen had been retrenched provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (*b*, of Section 25 F shall not exceed his average pay for three months.

In the instant case the explanation to Section 25 FFF does not apply because from the counter statement it is clear that the undertaking has been closed down not merely due to financial difficulties but due to a variety of causes, one of them being that the management was confronted with heavy litigation in the type of industrial disputes. As per the claim statement M. Thimmappa has put in 21 years service, T. Narayan that years, G. K. Gowda 8 years, M. Mogappa 18 years, K. Gopala

Bingera 16 years, A. Sheena 26 years and Aithappa Poojary 4 years of service with the management. The workmen have deposed to their length of service. There is no rebuttal on oath by the management. I hold that the above described seven workmen are entitled to closure compensation equivalent to three months average pay of each individual. They are not entitled to any bonus as admittedly the concern has gone in liquidation. The points of dispute are answered accordingly.

AWARD.

The Management of Mangalore Automobile Ltd., Attavar Road, Mangalore was justified in terminating the services of all the workmen mentioned in the order of reference. B. M. Thimmappa, T. Narayana Bhat, G. H. Soans, M. Monappa, K. Gopala Bungera, A. Sheena and Aithappa Poojary are entitled to closure compensation equivalent to their average pay for three months. They are not entitled to any other relief. No order as to costs.

Place: Hubli
Dated: 28-10-1967.

SYED AZIZUDDIN AHMED,
Presiding Officer,
Labour Court, Hubli.

ANNEXURE

Reference (ID (LCH) No. 55/1967.

Witnesses examined for I Party

W.W. 1 A. Sheena s/o A. Ananda
W.W. 2 B. M. Thimmappa s/o M. Manjunath
W.W. 3 T Narayana Bhat s/o T Krishna Rao
W.W. 4 G. H. Soans s/o Sadanandu Soans
W.W. 5 K. Gopal Bangera
W.W 6 M. Monappa s/o M. Babu
W.W. 7 K. Itha Poojari s/o K. Thayappa.

Witnesses examined for II Party

Nil

Documents marked for I Party

Exhibits :

W—1 Letter dated 30th December 1966 from II Party to I Party.

W—2 Application dated 22nd December 1966 authorising the I Party union to conduct the case for workmen.

Documents marked for II Party

M—1 True copy of award passed in Reference (ID) (LCH) No. 80/1963, by Labour Court, Hubli.

M—2 True copy of award passed in Reference (ID) (LCH) No. 39/1963 by Labour Court, Hubli.

M—3 True copy of award passed in Complaint No. 19 of 1962 in I. D. No. 6 of 1962, by I. T Bangalore.

M—4 True copy of award passed in Industrial dispute No. 15/1963 by Additional I. T Bangalore.

M—5 True copy of Order passed in Applications (LCH) Nos. 147, 148 and 149/1964 by Labour Court, Hubli.

M—6 True copy of Award passed in Reference (ID) (LCH) No. 18/1966 by Labour Court, Hubli.

M—7 True copy of award passed in Ref. No. 54/1966 by Labour Court, Bangalore.

SYED AZIZUDDIN AHMED,
Presiding Officer,
Labour Court, Hubli.

Place : Hubli
Date : 29-10-1967

ORDER

Bangalore dated the 3rd November 1967.

S. O. 2138.—WHEREAS by State Government Order No. FCL. 365 LLD 67, dated 28th June 1967 the Industrial Dispute between the workmen and the Management of Mangalore Automobiles Ltd., Mangalore, was referred to the Labour Court, Hubli for adjudication;

AND WHEREAS the Labour Court has submitted to the State Government its award in respect of the said Industrial Dispute;

NOW, THEREFORE, in exercise of the powers conferred by section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), the Government of Mysore are pleased to direct the publication of the said award as above, in the *Mysore Gazette*.

[No. FCL 365 LLD 67.]

By Order and in the name of the Governor of Mysore,

1414 G. G. PUROHIT, *Under Secy.*